



CONSULTING AND OTHER SERVICES CONTRACTS

**From The Office Of State Auditor
Claire McCaskill**

State agencies are generally receiving and using the services contracted for; however, some weaknesses were noted.

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PERFORMANCE AUDIT



Office of
Missouri State Auditor
Claire McCaskill

February 2002

Most state contracts with outside consultants and other service providers met requirements and filled needs; however, some weaknesses were noted

Auditors reviewed various contracts with outside consultants and other service providers to determine if state agencies sought necessary services, received completed work, used the products and properly procured the contracts. Audit tests included reviewing 63 judgmentally selected contracts from 31 state agencies. Test results showed no problems with 53 contracts, but weaknesses in 10 contracts. The following highlights some of the weaknesses noted by auditors:

Intended outcome did not materialize - Two contracts reviewed did not produce the results intended, causing the state to pay for some services not received or used. One contractor developed a bench guide for circuit court judges. The agency spent \$8,295 on the guide, which went undistributed and unused. (See page 4)

Competitive bids not sought - Agencies involved in two of the contracts tested did not solicit competitive bids or proposals for the services. In one \$103,176 contract to create a training program for local court officials, the agency did not solicit bids, despite an internal policy requiring bids for purchases above \$3,000. (See page 5)

Payments to contractors not tied to work performed - In four contracts tested, the contract payment provisions authorized the contractors to receive 50 percent of the contract price when the contracts were signed, rather than tying payments to work performed. The initial payments ranged from \$6,865 to \$4.1 million. In addition, the contractors started their work and incurred costs before the contracts were signed. (See page 5)

Conflicting pricing provisions - One contract had conflicting pricing provisions. The contract stated the price would stay the same upon renewal, but the contract also included a pricing page allowing an increase during the first renewal period. As a result, when the contract was renewed, the contractor increased the price by \$12,245, as noted on the pricing page. (See page 6)

These weaknesses indicate not all contracts complied with established policies and procedures. Improving awareness of these policies and procedures would help prevent future problems.

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Missouri State Auditor

Honorable Bob Holden, Governor
and
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The State Auditor's Office audited various consulting and other services contracts in effect between July 1, 1998 and June 30, 2000. The primary objectives of the audit were to determine whether state agencies received the contracted services and used the resulting products/deliverables as intended. We also determined if the contracts were properly procured and had adequate provisions.

We reviewed 63 contracts and concluded the contracted services were generally properly received and used by the applicable agencies. However, two agencies either did not receive and/or use the contracted services. Procurement weaknesses and questionable provisions were noted with some contracts.

The audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such tests of the procedures and records as were considered appropriate under the circumstances.

Claire McCaskill
State Auditor

August 3, 2001 (fieldwork completion date)

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RESULTS

State Agencies Generally Received Contracted Services; but Some Weaknesses Existed

We reviewed 63 consulting and other services contracts awarded by 31 state agencies and determined that contracted services were generally received. However, we identified weaknesses in 10 contracts, or 16 percent, awarded by 6 agencies. Two agencies' contracts, totaling \$188,535 did not result in the intended outcome. Four other agencies had weaknesses such as noncompetitive procurement or questionable contract provisions and procedures. While varying factors contributed to these weaknesses, improved awareness of established policies would help alleviate them.

Background

All state agencies, except the Legislative Branch, Judicial Branch, Lottery Commission, and the Department of Transportation (except data processing, telecommunications, and printing) are governed by Chapter 34 of the Missouri Revised Statutes, for the purchase of products and services. Exempted agencies have established their own policies or follow the guidance in Chapter 34. That chapter requires the Commissioner of Administration to purchase all supplies (including contractual services) for all applicable departments. However, the Commissioner has granted local purchase authority to agencies, which may delegate all or part of this authority to their sub-agencies. *(See Appendix II, page 11, for additional background.)*

Audit methodology

State agencies identified approximately 1,500 consulting and other services contracts in effect between July 1, 1998 and June 30, 2000. We judgmentally selected 63 contracts to review. When selecting the contracts, we considered the cost of the contract, the nature of the services, and the size of the agency. *(See Appendix I, page 9, for additional information.)*

Most contracts resulted in the intended outcome

State agencies received the contracted services, and the product was used in 61 of the 63 contracts reviewed. In addition, state agency officials generally complied with established purchasing regulations and policies and the contract provisions were proper.

Two contracts did not provide the outcome intended

The Department of Health and Office of State Courts Administrator had contracts that did not result in the intended outcome. As a result, the state paid for services that were not received and/or used.

Department of Health

In June 1998, the Department of Health's Office of Minority Health contracted to pay Lincoln University an amount not to exceed \$210,000 to enhance the department's ability

to serve Missouri's minority population. The contract required the university to complete various studies, conduct a training seminar, and establish and sustain a Missouri Center on Minority Health and Aging. The studies to be conducted focused on improving the health status of minorities in three targeted communities: St. Louis, Kansas City, and southeast Missouri. However, university officials did not perform or complete all the services in the contract. Although department officials agreed with reducing the contracted services, they made the changes informally with no written documentation or formal contract amendment(s). Even though the contractual services were reduced substantially, department officials still paid the university \$180,240.

While the department contracted for nine focus group interviews and a comprehensive final report, department data showed university officials only conducted five focus group interviews and did not submit a final report. Further, department officials told us they did not use the information obtained from the focus group interviews that were conducted. They also stated they had directed the university to only conduct six interviews and did not require a final report.

The contractor also did not analyze the impact the Mobile Health Van Program had on local health department clinics in Pemiscot, Dunklin, and southern New Madrid counties as required in the contract. Department officials decided the Mobile Van Program assessment did not need to be completed because they were restructuring the program.

A department official acknowledged there were deficiencies in the design of the contract. That official indicated the department did not require all the research components of the contract be completed; however, she indicated many of the agreed upon goals for establishing the center were met, even though they were not documented in the contract. As a result, the department did not further reduce the money paid to the university. To correct this issue, this department official indicated the Office of Minority Health continues to receive technical assistance from the department's administrative offices to draft contracts that are more reflective of the intent and required outcomes of other contractual agreements.

Office of State Courts Administrator

In March 1999, the Office of State Courts Administrator (the Courts Administrator) contracted with Phelps County and an Associate Circuit Judge in that county to publish an Associate Court Bench Guide for Traffic, Conservation, and Water Patrol cases.¹ Although the Courts Administrator paid for developing the bench guide, no funding was made available to market and distribute the guide. As a result, the guide went undistributed and unused, even though state officials paid Phelps County \$8,295 for

Contracted
product was
never used

¹ The bench guide detailed a statewide fine schedule authorized by the Missouri Legislature in 1996. The guide's release was intended to coincide with the new Fines Collection Center. Associate Court Judges that chose not to use the new Fines Collection Center could use the guide.

the product. The Associate Circuit Judge said the state also lost additional fine revenues due to this situation.

The reasons for not distributing the guide stem from an incomplete contract and differing understandings about who should fund that part of the project. Court Administrator officials believed funds for distribution should have come from other sources, adding that the Phelps County contract did not cover distribution of the guide. The judge had said he was not able to obtain any additional money to distribute the bench guide from other sources or from the Courts Administrator. However, Courts Administrator officials indicated that the 2001 update to the bench guide is being prepared and they will ensure it is distributed to the applicable parties.

Three contracts had procurement weaknesses

State agency officials responsible for three contracts did not comply with established purchasing regulations and policies. One contract (Missouri Veterans Commission) circumvented the Office of Administration's purchasing requirements, and two other contracts (Supreme Court and Office of State Courts Administrator) were not competitively bid.

Missouri Veterans Commission

The Missouri Veterans Commission contracted in May 1997 for a Quality Management Review of various state veterans homes, which cost \$73,459 in fiscal year 1999 and \$57,890 in fiscal year 2000. While this agency solicited bids for these services, the contract amounts exceeded the \$25,000 local purchase threshold as delegated by the Office of Administration. Therefore, by procuring these services through the local purchase contract delegation of authority, the Missouri Veterans Commission circumvented the state's purchasing requirements.

Purchasing
requirements
circumvented

Missouri Veterans Commission officials indicated that while its central office handled the procurement of the services, each home entered into its own contract. Each home had the choice to accept or reject the contracted services. A commission official stated the local purchase contract threshold was not violated because each home could choose whether to use the services and no home paid over \$25,000 per year for the services. However, Office of Administration officials stated the purchase should have been referred to its staff for procurement since the total expenditures exceeded \$25,000 and the central office handled the procurement of these services for all the homes.

Missouri Supreme Court

In November 1999, the Missouri Supreme Court did not solicit bids or proposals before awarding an 8-month, \$10,000 contract to a consultant for cleaning and maintaining offices. Although the Supreme Court is not governed by the state purchasing law, the Court Clerk stated the court follows state practices in the absence of having internal

Proposals not
solicited before
awarding contract

purchasing guidelines. However, in this instance, court staff did not follow state practices. In addition, there was no evidence that staff checked into other possible service providers.

The Court Clerk stated the contractor had unique qualifications to perform the contract's functions and added that a bid process would not have identified a comparable qualified consultant. The Court Clerk also indicated he needed the contractor to immediately begin assessing the agency's needs before the maintenance supervisor retired. As such, the court decided to enter into the contract without seeking competitive proposals.

The agreement required the contractor to consult with court officials regarding office maintenance and cleaning, train designated staff and employees in proper cleaning techniques, and evaluate this staff.

Office of State Courts Administrator

In June 2000, the Office of State Courts Administrator did not solicit bids before contracting with two consultants to design a training program for local court officials. Although the Courts Administrator is not governed by state purchasing laws, internal procedures require that bids be solicited for items or services of \$3,000 or more. Expenditures related to this contract totaled \$103,176.

A Courts Administrator official indicated these consultants were selected based on their knowledge and ability to develop and deliver the project within a strict timeframe and allotted budget. However, in September 2001, other Courts Administrator officials indicated they agreed competitive proposals should be solicited and used as a basis in selecting consultants or contractors. They indicated there have been several policy and organizational changes since this contract. A Contracts and Grants Coordinator is now responsible for ensuring procurement policies and procedures are followed. In addition, the fiscal policies and procedures have been evaluated and updated, and the Contracts and Grants Coordinator must approve all sole source contracts.

Five contracts showed weaknesses in certain contract provisions

Four Department of Elementary and Secondary Education contracts involved questionable payment provisions, and a Department of Social Services contract procured by the Office of Administration had conflicting pricing provisions.

Department of Elementary and Secondary Education

Four Department of Elementary and Secondary Education (education) contracts had questionable payment provisions. These payment provisions authorized the contractor to receive 50 percent of the contract amount once the contract had been signed. The initial payments on these contracts ranged from \$6,865 to \$4,128,309. In addition, education officials also authorized the contractors to start work and incur costs before the contracts were signed. For the four contracts reviewed, contractors started working from 1 to 4

months prior to a finalized contract.

An education official indicated such payment provisions were standard in department contracts of this nature. She said these payment provisions occurred because it often took the agency 4 to 6 months to obtain all necessary signatures (particularly contracts involving colleges or universities). Education officials defended paying half of the amount upon a signed contract because the contractor had generally already worked on the project for an extended time period.

Office of Administration officials stated that contract provisions authorizing large initial payments are not a good practice and are discouraged. The payment provisions of contracts should tie payments to the work performed or the progress toward a completed contract. While an education official indicated program staff work closely with the contractor and ensure any payments made to the contractor correlate to the work performed, no documentation existed to support this practice, nor did the contracts require it. In addition, authorizing work to start before a contract is signed places unnecessary risk on the state. Liabilities could result if disputes arise related to a contract that has not been formally approved and signed.

Poor business practices place state at risk

Office of Administration

In 1998, the Office of Administration, Division of Purchasing and Materials Management hired a consultant for the Department of Social Services to review service quality of health maintenance organizations operating in the state. This contract contained conflicting, or contradictory, pricing provisions. The contract began February 1998 and cost \$477,434 the first year.

A provision within the contract gave the Division of Purchasing and Materials Management the right to renew the contract for four additional 1-year periods. A provision in the contract stated: "In the event the Division of Purchasing and Materials Management exercises such right (to renew the contract), all terms and conditions, requirements and specifications of the contract, including prices, shall remain the same and apply during the renewal periods." Although the contract included this provision, the state buyer's bid invitation included a pricing page specifying a price increase during the first renewal period. As a result, the contractor increased the amount by \$12,245, as noted on the pricing page, upon renewing the contract.

Price increase contradicts contract

A Division of Purchasing and Materials Management official, responding to this situation, indicated he regretted the inconsistent language between the contract provision and the pricing page. However, he explained the pricing page would override the contract language and allow the increase. He indicated it was a general practice to allow for a slight price increase on renewal options and that contract language prohibiting such increases is unusual.

Conclusion

For those contracts reviewed, state agencies generally received and used the contracted services; however, some weaknesses were noted. Our analysis indicated that established policies and procedures did not ensure proper handling of consulting and other services contracts.

The policies did not ensure agencies received and used the contracted services, or that agencies properly procured such services. The local purchase delegation of authority regulations did not ensure the Office of Administration handled all applicable procurements as required. In addition, agencies did not solicit competitive bids or proposals to the extent possible.

The policies also did not ensure adequate payment or pricing provisions. Some payment provisions were not contingent on the amount of work performed or progress made toward a completed contract. Contractors should not be authorized to start work prior to a final and signed contract. In addition, we noted inconsistent and contradictory pricing provisions. Care should be taken to ensure such contractual provisions, including pricing provisions, are clear and consistent.

Each weakness demonstrates that consulting and other services contracts did not always comply with established policies and procedures. The weaknesses occurred across several state agencies with little assurance they would not occur again. Improving the awareness of established policies and appropriate practices would help accomplish these ends.

Office of Administration comments:

The Office of Administration appreciates the opportunity to offer the following comments regarding the Consulting and Other Services Contracts audit report.

The Division of Purchasing and Materials Management and the state agencies that fall under Chapter 34 authority have a shared responsibility for ensuring that consulting and other services contracts comply with established policies and procedures. The Division of Purchasing and Materials Management is primarily responsible for the establishment of the contracts except when a delegation of authority exists. The state agency is primarily responsible for monitoring the contract to ensure that the services are received and used in accordance with the contract. However in both the establishment of and the administration of the contract there is need for considerable collaborative effort between the Division of Purchasing and Materials Management and the state agency in order to obtain the intended outcome.

The Office of Administration agrees that improving the awareness of established policies and appropriate practices would help to ensure the proper handling of consulting and other services contracts. The Division of Purchasing and Materials Management attempts to do this by issuing a Delegation of Authority to a department only upon the signature of the department director acknowledging that the department will adhere to the requirements stated within the document. The Division of Purchasing and Materials Management further attempts to ensure that the department is following the procurement requirements by providing an on-site review of the procurement practices of those agencies that have been issued a Delegation of Authority in order

to assist them in their procurement activities and by providing procurement training to them. Since the Division of Purchasing and Materials Management has limited resources available for this activity, it is possible to do on-site reviews for only a few of the agencies each year. The Division of Purchasing and Materials Management also holds bimonthly agency meetings to share information regarding procurement policies and other related information with the state agencies. While the Division of Purchasing and Materials Management has no authority over those agencies that are exempt from Chapter 34 requirements, it does provide assistance to those agencies upon their request. The Division of Purchasing and Materials Management will continue to try and improve the awareness of and implementation of appropriate procurement policies and procedures throughout the state agencies.

OBJECTIVES, SCOPE AND METHODOLOGY

Objectives

The primary objectives of the audit were to determine whether state agencies received the contracted services and used the resulting products/deliverables as intended. We also determined if the contracts were properly procured and had adequate provisions.

Scope and Methodology

The State Auditor's Office audited various consulting and other services contracts in effect between July 1, 1998 and June 30, 2000. We considered a consulting or other services contract as a contract in which a firm or individual was hired to provide professional, technical, or other personal services to the applicable agency while not in an employment capacity.

To obtain a population of such contracts, we surveyed various state agencies and requested a listing of the contracts meeting this criteria. We obtained the following information: contractor name, contract number, nature of the contract, product or deliverables that resulted from the contract, and estimated expenditures incurred during the period under review.

The listings provided by the various agencies included approximately 1,500 contracts. Because the state does not maintain a centralized database of all consulting and other services contracts entered into by the various state agencies, we could not determine, or ensure, that the listings provided by the state agencies were complete and included the entire population of contracts that were requested. We judgmentally selected 63 contracts for review based on the following factors:

- 1) The nature of the contract. Contracts of an unusual nature were more likely to be selected.
- 2) The cost of the contract. Contracts involving large expenditure amounts were more likely to be selected.
- 3) We ensured several contracts were selected involving the larger state agencies.

The audit staff obtained copies of the contracts selected and reviewed them to determine whether:

- Services were received by the agency.
- The agency used the resulting product or deliverables.
- Services were procured in accordance with established purchasing regulations or policies.
- Contract provisions were proper.

APPENDIX I

During the course of the audit, the audit staff:

- Interviewed individuals in the Office of Administration, Division of Purchasing and Materials Management to gain an understanding of that agency's role in the procurement of consulting and other services contracts.
- Reviewed procurement regulations and state statutes, and various agencies' internal purchasing policies and procedures, when applicable, to gain an understanding of the requirements surrounding the procurement of these services.
- Contacted officials at various state agencies to discuss the selected contracts.

CONTRACTING LAWS AND PROCEDURES

This appendix describes the applicable Missouri statutes authorizing state agencies to enter into consulting and other services contracts, and the Office of Administration, Division of Purchasing and Materials Management oversight responsibilities.

All state agencies, with the exception of the Legislative Branch, Judicial Branch, Lottery Commission, and the Department of Transportation (except data processing, telecommunications, and printing services) are governed by Chapter 34 of the Missouri Revised Statutes. That chapter outlines state purchasing requirements for those agencies to which it applies.

The Commissioner of Administration should purchase all supplies, including materials, equipment, and contractual services, for all departments of the state, except as otherwise provided.¹ All purchases in excess of \$3,000 should be based on competitive bids. For any expenditure estimated to be \$25,000 or more, the Commissioner of Administration should perform certain procurement procedures including advertising, posting, and soliciting by mail for bids from prospective vendors.²

The purchasing laws address when the competitive bidding requirement may be waived. If the Commissioner of Administration determines the use of competitive bidding is either not practicable or not advantageous to the state, supplies or services may be procured by competitive proposals.³ The Commissioner may waive the requirement of competitive bids or proposals for supplies when he has determined in writing that there is only a single feasible source for the supplies. In addition, the Commissioner may waive the requirement of competitive bids or proposals for supplies in cases of emergency or a threat to public safety or welfare.⁴

The Office of Administration, Division of Purchasing and Materials Management has granted local purchase authority to those agencies governed by Chapter 34. This delegation of local purchase authority allows state agencies, through competitive bidding, to make local purchases or to enter into purchase contracts with a total value less than \$25,000 for an initial contract period not-to-exceed 12 months. The agencies may include renewal options in such contracts; however, each renewal should not exceed 12 months and must be less than \$25,000.

Local purchase authority cannot be used for the procurement of: 1) supplies that are available on current agency, statewide, or blanket contracts, 2) vehicles, 3) supplies for which a series of payments to the same vendor will have an aggregate value of \$25,000 or more within the same fiscal year, 4) supplies which will utilize lease/purchase financing, 5) supplies which will utilize a competitive negotiation process, or 6) single feasible source supplies in excess of \$3,000. All such procurements must be referred to the Office of Administration, Division of Purchasing and

¹ Section 34.030, RSMo 2000.

² Section 34.040, RSMo 2000.

³ Section 34.042, RSMo 2000.

⁴ Sections 34.044 and 34.045, RSMo 2000.

APPENDIX II

Materials Management for processing. A state agency may delegate all or part of its local procurement authority to its sub-agencies.

For the state agencies that are not governed by Chapter 34, RSMo 2000, we determined whether any purchasing policies or procedures had been established by those agencies and reviewed them for compliance.